LIBRARY
SUPREME COURT, U. S.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1948

## No. 418

EDWARD GIBBS, PETITIONER,

*vs.*

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1948.

CERTIORARI GRANTED NOVEMBER 15, 1948.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1948

# No. 418

EDWARD GIBBS, PETITIONER,

*vs.*

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

INDEX


| | Original | Print |
|---|---|---|
| Proceedings in Supreme Court of Pennsylvania | 1 | 1 |
| Docket entries | 1 | 1 |
| Petition for writ of habeas corpus | 3 | 2 |
| Letter, Hon. George C. Corson to Edward Gibbs, February 26, 1948 | 6 | 4 |
| Endorsement—Rule to show cause issued; writ denied | 6 | 4 |
| Answer of C. J. Burke, Warden | 7 | 5 |
| Commitment, September 30, 1947 | 9 | 6 |
| Answer of Commonwealth | 10 | 6 |
| Exhibit "A"—Report of Probation Officer | 15 | 9 |
| Acceptance of service of certificate of rule by District Attorney | 16 | 11 |
| Record from Court of Quarter Sessions of Delaware County | 16a | 11 |
| Clerk's certificate (omitted in printing) | 16a | |
| Docket entries | 17 | 12 |
| Indictment | 18 | 12 |
| Swearing of jury, plea of not guilty, verdict and sentence | 19 | 14 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JAN. 20, 1949.

## Past Record

210 Dec. Sess. 1928, 1-9-29 found guilty of B & E & L & R S G. 1-11-29. $200 and costs, 1 to 2 yrs. Co. Jail, Judge Fronefield.

269 Sept. Sess., 1928, Oct. 5, 1928 found not guilty of A A&B with int. to kill. Pay costs, Judge MacDade.

158 Dec. Sess. 1928, 12-28-28 found not guilty of larceny of chickens, Judge Fronefield.

1930, arrested in Marcus Hook, Pa., charged with corner lounging, Disch. by Mgst.

264 Mar. Sess. 1931, 3-17-31 plead guilty to larceny. $100 and costs, 1 to 2 yrs. in Co. Jail by Judge MacDade.

109 Sept. Sess. 1932, 10-4-32 found guilty, L & R S G. $50 and costs, 6 mos. to 3 yrs. in Co. Jail, Judge Morrow.

5-4-34, arrested in Marcus Hook, Pa., charged with A&B, hit and run and oper. intox. 5-9-34, discharged by Mgst. Williamson.

461 Sept. Sess. 1934, 8-29-34 arrested in Marcus Hook, Pa., charged with larceny. 10-5-34, found guilty, $100 and costs, 6 mos. to 3 yrs. in Co. Jail by Judge Fronefield. (1-10-36 sent. to 1 yr. in Co. Jail for Viol. of Parole by Judge Fronefield.)

274 Dec. Sess. 1935, 10-17-35 arrested in Marcus Hook, Pa., charged with larceny. 1-17-36, found not guilty of L & R S G. See 461 Sept. Sess. 1934 for Viol. Parole by Judge Fronefield.

262 June Sess. 1937, 3-9-37 arrested in Marcus Hook, Pa., charged with lar. of auto. 6-7-37 ignored by Grand Jury.

279 Sept. Sess. 1937, 6-5-37 arrested in Marcus Hook, Pa., charged with R S G. 10-18-37 plead guilty, $10 and costs, 1 to 3 yrs. in Co. Jail, sen. susp., paroled for 3 years, Judge MacDade.

Aug. 1938 arrested in Marcus Hook, Pa., charged with being drunk, sent. to 15 days in Co. Jail by Mgst. O'Donnell.

Aug. 1938, arrested in Marcus Hook, Pa., charged with being drunk, Sent. to 15 days in Co. Jail by Mgst. Imburgia.

187 Dec. Sess. 1938, arrested 10-3-38 in Marcus Hook, Pa., charge lar. 1-3-39, found guilty, $50 and costs and rest., 1½ to 3 years in Co. Jail by Judge Crichton.

451 Mar. Sess. 1947, arrested 12-3-46 in Marcus Hook, Pa., charge burglary, 3-17-47, found not guilty, Judge Ervin.

452 Mar. Sess. 1947, charge larceny. 3-17-47 found not guilty, lar. Pay costs, directed verdict not guilty R S G., Judge Ervin.

453 Mar. Sess. 1947, charge Poss. burg. tools. 3-17-47, found not guilty. Pay costs, Judge Ervin.

ntd.

Endorsement: 722. No. — 19—. Commonwealth vs. Edward J. Gibbs. Report of Probation Officer.

[File endorsement omitted.]

---

[fol. 16] In the Supreme Court of Pennsylvania

[Title omitted]

Acceptance of Service of Certificate of Rule—Filed June 29, 1948

May 24, 1948. Petition for writ of habeas corpus filed.

Edward Gibbs.

Order

June 21, 1948. A rule is hereby directed to issue against C. J. Burke, Warden, Eastern State Penitentiary, and the District Attorney of Delaware County, calling upon them, or either of them, to show cause why the prayer of the within petition should not be granted; rule returnable July 3, 1948.

By the Court, Stearn, J.

True Copy from Record.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court, at Philadelphia, this twenty-second day of June, 1948.

(Signed) C. A. Waters, Prothonotary. (Seal.)

[File endorsement omitted.]

Certificate of Rule

June 24, 1948.

Service is hereby accepted of the within Certificate of Rule.

(S.) C. Wm. Kraft, District Attorney, Delaware County, Media, Pa.

---

[fol. 16a] Clerk's Certificate to following transcript omitted in printing.

[fol. 17] IN THE COURT OF QUARTER SESSIONS FOR THE COUNTY OF DELAWARE, STATE OF PENNSYLVANIA

No: 149, Sept. Sessions 1947

DOCKET ENTRIES

Harold L. Ervin, Judge

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GIBBS

September 16, 1947. Deft. indicted for Larceny & R S Goods. True Bill.

September 30, 1947. Deft. plead Not Guilty to Larceny—2nd Count R. S. Goods withdrawn.

Eo Die. Jury called and sworn who returned verdict of Guilty as to Larceny.

Eo Die. Deft. sentenced to pay $10.00 fine and costs and imprisonment in Eastern State Penitentiary for a period of 2½ years min. to 5 years Max. from commitment July 17, 1947.

Eo Die. Clerk's certificate filed.

October 16, 1947. Transcript of testimony of trial September 30, 1947, lodged.

November 19, 1948. Copy of petition for writ of Certiorari to the Supreme Court of Penna., from the Supreme Court of the United States (127 Misc. Oct. Term 1948). Case transferred to the Appel-ate Docket as of #418 (Forma Pamperis), filed.

---

[fol. 18] IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF THE COUNTY OF DELAWARE, PENNSYLVANIA

INDICTMENT

COUNTY OF DELAWARE, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Delaware, upon their respective oaths and affirmations, do present, That Edward Gibbs late of the said County yeoman on the 17th day of

July in the year of our Lord one thousand nine hundred and forty-seven at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc. a suitcase containing clothing, a watch, a camera, and a radio altogether of the value of One Hundred Twenty One Dollars and Fifty-Cents ($121.50) of the goods and chattels, moneys and property of James Blades then and there being found then and there feloniously did steal, take and carry away contrary to the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Gibbs afterwards, to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, &c., the goods and chattels, moneys and properties aforesaid, by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly, and for the sake of wicked gain did receive and have, the said Edward Gibbs then and there well knowing the goods and chattels, moneys and properties last mentioned to have been feloniously stolen, taken and carried away, contrary to the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

(S.) C. Wm. Kraft, District Attorney.

No. 417, September Sessions, 1947. Commonwealth vs. Edward Gibbs. 1st Count—Larceny. Penal Code 1939, P. L. 872, § 807, 808; (18 P. S. Supp. § 4807, § 4808). 2nd Count—Receiving Stolen Goods. Penal Code 1939, P. L. 872, § 817; (18 P. S. Supp. § 4817) withdrawn. Felony. True Bill. (S.) Chas. L. Smith, Foreman. Sep. 16, 1947. The Defendant, being arraigned, pleads Not Guilty. (S.) Edward J. Gibbs, Dist. Atty. sim. et issue. Verdict —— —— 19—. Transcript No. 149.

Witnesses: James Blades, Prosecutor; Mary Lafield, Ernest Fleming.

Bail, $——. Jail. MAM.

[fol. 19] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND COURT OF QUARTER SESSIONS OF THE PEACE OF DELAWARE COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

EDWARD GIBBS

SWEARING OF JURY, PLEA OF NOT GUILTY, VERDICT AND SENTENCE

No. 417, Sept. Sessions, 1947. Transcript No. 149. Jury called and sworn 9/30/1947 (Date). 9/30/1947 (Date) Plea Not Guilty. Verdict 9/30/1947—Guilty of Larceny.

Indictments

Reported by M. Fenix Cornwall, Official Stenographer.
Larceny & R. S. Goods withdrawn.
Court No. 2. Above is certified as correct.

(S.) John Rickerts, Deputy Clerk.

Sentence: And now to wit 9/30/1947 the within named deft. is sentenced by the Court as follows: 1—To pay all costs √; 2—Pay fine of $10; 3—Undergo imprisonment in the Eastern State Penitentiary at separate and solitary confinement for a period of 5 yrs. Maximum and 2½ yrs. Minimum. Sentence to date from commitment July 17, 1947 and stand committed until this sentence be complied with.

Judge Ervin, Court Room #2—JR, Clerk. (Seal.)

(S.) K. Johnson, Ass't District Attorney. None, Counsel for Defendant.

(S.) H. L. Ervin, Judge.

Filed 9/30/47. (S.) J. Y. Deputy Clerk.

[fol. 20] RECORD OF PROCEEDINGS BEFORE JUSTICE OF THE PEACE

Transfer from the Docket of W. Harlan McCafferty, Justice of the Peace.

On the 17th day of July, A. D. 1947, personally appeared before me W. Harlan McCafferty, a Justice of the Peace, in and for the said County, James Blades, who being duly [affirmed] [sworn] according to law deposes and says upon information received from —— which he believes to be true and expects to be able to prove, upon personal knowledge that Edward Gibbs on the 17th day of July, A. D. 1947, and within the past two years in the Boro. of Marcus Hook, County of Delaware, Commonwealth of Pennsylvania, did on or about the hour of 10:15 A. M. at 710 Market St., Marcus Hook, Pa., did violate Section 807 of The Penal Code of the Commonwealth of Penna. by committing larceny at a house located at 710 Market St., Marcus Hook, Pa., taking the following articles a watch valued about $20.00, clothing valued about $54.50, a camera valued about $12.00, radio valued about $30.00, suit case valued about $5.00 and se-man papers, contrary to the form of the Act of Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

(S) James N. Blades, (S) W. H. McC. (Seal)

[Sworn] [Affirmed] and subscribed to before me this 17th day of July, A. D. 19—, at Marcus Hook, Delaware County, Penna.

[Seal] (S) W. Harlan McCafferty, Justice of the Peace.

My commission expires 1st Mon. Jan., 1950.

Commonwealth of Pennsylvania vs. Edward Gibbs. No Address —.

Warrant issued to Ernest Fleming on the 17th day of July, A. D. 1947 on oath of James Blades.

And now, July 17, 1947 Defendant brought up for hearing. James Blades (sw) said: When I came home I went to my room, and I told my mother that she must have done a real cleaning job that she put away the radio, clothe- and everything. She said the only thing she did was to make the bed. I told her the radio was gone, and she said Edward

Gibbs was here looking for you. I went for an Officer. He took a radio valued about $30.00, clothing valued about $54.50, camera valued about $12.00, watch valued about $20.00, suit case valued about $5.00 and se-man papers. [fols. 20a-21] Officer Fleming's and myself went to Chester to look for Gibbs. We found all the thing in a pawn shop at 141 W. 3rd St., Chester, Pa., except the watch which was on his wrist at the time of his arrest. We found him in Hill's Grill, 223 Edgmont Ave., Chester, Pa., at that time he was wearing my hat. I took the hat off his head.

Mrs. Mary Layfield (sw) said: Mr. Edward Gibbs was in my home on July 17, 1947 at about 9:30 A. M. I was cleaning when he came in the hall. He asked if he could go up and get Jim. I told him Jim went out. I was cleaning and I asked him to go out. He said he would like to use the bath room. I told him alright, but not to stay in there. When he went up he looked in Jim's room as he went by and I suspicioned him. I shut Jim's door and walked to the other hall. When I came back he was standing looking at Jim's door, and I asked him if he was through with the bath room. He said he was and I told him to get out. He went out. I was getting lunch and heard someone walking around upstairs. I thought it was Mr. Bennett. When Jim came home he missed his things. My radio was gone and I said it must have been Ed Gibbs.

Officer Fleming (sw) said: On or about 1:00 P. M. July 17, 1947 I received a complaint from James Blades about clothe- and radio being gone. The radio wire had been cut loose from the radio and there were clothing laying on the floor. Mr. Blades and myself went to Chester to look for Gibbs and to find out if the things had been pawned. I went to Joe's pawn shop and Edward Gibbs had been there, with some articles but refused to accept them. He described him to us. We went to 141 W. 3rd St., and the owner said he had them. He gave me the description of them. He gave us his age, weight and height, and how he was dressed. He gave him $8.00 for the things. I found him in Hill's Grill at 223 Edgmont Ave., Chester, Pa. I placed him under arrest and he had Jim Blades watch and hat on.

Defendant refused to testify.

After hearing, defendant required to give bail in the sum of $500.00, conditioned for his appearance at the next term of Court.

Defendant committed July 17, 1947 in default of $500.00 bail.

The following persons each tent in sum of $—— to appear and testify at said term of Court:

Witness:

James Blades, 710 Market St., Marcus Hook, Pa.
Mrs. Mary Layfield, 710 Market St., Marcus Hook, Pa.
Ernest Fleming, 221 Market St., Marcus Hook, Pa.

Upon inquiry, defendant gave as persons to be notified of trial, None.

I hereby certify that the above is a correct transcript from my docket. Witness my hand and seal this 22nd day of July, A. D. 1947.

(S) W. Harlan McCafferty, Justice of the Peace.
(Seal).

[fols. 21a-22] [Endorsed:] Criminal Transcript. No. 149. Sept. Sess. 1947. From W. Harlan McCafferty, Justice of the Peace, Alderman, 1018 Washington St., Marcus Hook, Pa. Commonwealth of Pennsylvania vs. Edward Gibbs. No Address. 1360 Market Street, Linwood, Pa. Sur Charge: Larceny. Constable: Ernest Fleming, 221 Market St., Marcus Hook, Pa. Filed 7-23-47. (S.) W. J. D., Clerk of Courts.

Instructions to Justices of the Peace and Alde man

1. In Larceny cases state what goods were stolen, the value thereof, and the owner thereof.

2. In cases of Plain Assault and Battery be certain that the defendant is heard or afforded an opportunity to be heard and that your transcript shows what occurred.

3. In Rape cases show age of the female alleged to have been raped.

4. In cases of Burglary and Breaking and Entering, state definitely whether the building entered was a dwelling, and whether the breaking and entering occurred in the day time or night time.

5. In Fornication and Bastardy cases state the sex of the child and date of its birth, and also the approximate date of the commission of the act of fornication.

6. In cases of False Pretense set out fully what was falsely pretended.

7. In cases of Failure to Stop and Render Assistance, give the name of the person killed or injured, or, if no person was killed or injured, give the name of the person whose vehicle was damaged.

8. Be certain that:

(a) On the copy of the Information you have filled in the name of the prosecutor and your own name and seal.

(b) On the bottom of the transcript you have signed your name and attached your seal.

(c) On the recognizance you required all persons entering bail to justify properly.

9. A married woman may not go bail for any defendant.

10. Property owned jointly by husband and wife may not be accepted as bail.

[fol. 23] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY AND QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF DELAWARE, PENNSYLVANIA, SEPTEMBER SESSIONS, 1947

Court Room No. 2

No. 417

COMMONWEALTH OF PENNSYLVANIA

vs.

EDWARD GIBBS

**Transcript of Trial Proceedings**

Media, Pa., September 30, 1947.

Before Ervin, J., and a Jury

Karl W. Johnson, Esq., for Commonwealth.

ARRAIGNMENT AND PLEA

(Defendant arraigned and pleads not guilty.)

(Jury sworn.)

(Opening by Mr. Johnson.)

JAMES NORRIS BLADES, Sworn.

By the Clerk:

Q. Give your full name.
A. James Norris Blades.

[fol. 24] By Mr. Johnson:

Q. Where do you live, Mr. Blades?
A. 710 Market Street, Marcus Hook.
Q. What is your occupation?
A. Seaman.
Q. How long have you resided in Marcus Hook?
A. About twenty-five years.
Q. Do you know the defendant, Edward Gibbs?
A. Yes, sir.
Q. Did you see him on or about the seventeenth of July, 1947?

A. Twice.

Q. Where were you residing on this date?

A. When I seen him I was on Market Street, down toward the river, about 8:30 or 9:00 o'clock.

Q. Did you come home that day?

A. No, sir.

Q. You first saw him that day about what time?

A. 8:30 or 9:00.

Q. Did you see him later that day?

A. Yes.

Q. Where did you see him the second time?

A. In a beer garden at Ninth and Green in Marcus Hook.

Q. When did you first discover the loss of the articles?

A. About noon, when I went home.

Q. From what you learned there, what did you do?

[fol. 25] A. I went up to the room. I didn't have a top shirt on. I just had on an athletic shirt. It was pretty hot that morning. I came in the house between a quarter of twelve and twelve o'clock and my mother said——

Q. Don't tell us that, what she said.

A. I had some business up town and I went in to put on another shirt. I said to mother, "You must have been real smart today, you put my radio and suitcase away." She said, "I didn't do anything but make your bed." Then she tells me about him being there.

Q. Did she know him before?

A. Yes.

Q. Then what did you do?

A. I got my shirt on and ran around to the chief of police, Mr. Miller, and explained. He got hold of Officer Fleming and we checked on the stuff.

Q. Did you find the stuff later?

A. Yes, sir.

Q. Where did you find it?

A. I don't know the number on Third Street but it was only a door or two from Dock Street.

Q. Did you identify the clothing?

A. Yes.

Q. What were the articles that were missing?

A. A radio, two flashlights, a pin-striped coat, a blue [fol. 26] serge suit, a camera. The radio he brought back and put it in there. Of course, I had shaving supplies.

Q. Who do you mean?

A. The man who operated the place.

Q. Did you see the defendant later that day?

A. Yes, sir.

Q. Where was he?

A. He was in the taproom between Second Street and Third Street, on Edgmont Avenue.

Q. What of your clothing did he have on?

A. My hat and watch.

Q. You took those off of his person?

A. The officer did.

Q. What happened to your seaman's papers?

A. After the hearing, we searched for them and they came out of the cell room with them. Where they found them I don't know.

Mr. Johnson: Do you want to ask any questions?

The Defendant: Yes, sir.

Cross-examination.

By the Defendant:

Q. You say you saw me twice that day, Jim?

A. Yes.

Q. The first time was——

[fol. 27] A. Between eight-thirty and nine o'clock.

Q. How about twenty minutes of seven when we were up in your room with five bottles of beer?

A. How many?

Q. Five.

A. I don't remember the beer.

Q. You are sure of that?

A. I am sure of that.

Q. Weren't there empty bottles in the room?

A. You can ask her that (indicating mother of witness). She cleans the room.

Q. I will. When I was leaving your place, didn't you ask me where I was going?

A. You came up to the room, Edward, but that was five-thirty, or long before that.

Q. You said you saw me twice that day, I want to straighten that out.

A. I saw you on the street and then in the taproom. I said, "You got a hat like mine," and you said, it was a colored fellows by the name of Roy Johnson.

Q. Are you sure of that?

A. Yes.

Q. Didn't you ask me when I was leaving your room, you asked me where I was going and I told you I would meet you at Fourth and Market Street?

A. I don't remember that.

[fol. 28] Q. I told you about the appointment I had with the man who was going to set me up in the driving business?

A. No.

Q. Didn't you take my hat off my head and put this on because mine was dirty?

A. No.

Q. What time did we meet at Pete's?

A. I was talking to Wilson Spence. You told me you had to go to Chester, you had three hundred dollars waiting for you under the GI Bill of Rights.

Q. I told you I had a disappointment on that.

A. You didn't mention that.

Q. In Pete's, do you remember who opened the place, Barney?

A. Barney was serving but I was talking to Wilson Spence.

Q. Before Barney and Spence, didn't you ask me to take this stuff up — Chester for you?

A. No.

Q. Didn't I tell you to go get it and bring it in while I had a haircut?

A. I never mentioned my stuff.

The Defendant: Can I have permission to ask him about another time he accused me until it was proven otherwise?

The Court: It has nothing to do with this. If you are [fol. 29] going into that, you might get something in here that you do not want in.

The Defendant: I will take my chances on that.

By the Defendant:

Q. Last fall, last year, didn't you wreck your own automobile and enter a complaint that I stole your car and wrecked it?

Mr. Johnson: Objected to.

The Court: Objection sustained. It has nothing to do with this case.

The Defendant: All right.

The Court: Anything further?
The Defendant: No.

Redirect examination.

By Mr. Johnson:

Q. Will you examine that wallet? Whose wallet is it?
A. Mine. It has my driver's license, seaman's papers, receipts and discharges as a seaman.
Q. Whose watch is that?
A. Mine.
Q. Was that in defendant's possession?
A. Yes.
Q. And he had your hat on?
[fol. 30] A. Yes.
Q. You didn't give him the watch?
A. No, sir.
Q. You didn't change hats with him either?
A. No, sir.

Mr. Johnson: That's all.

---

Mary E. Lafield, Sworn.

By the Clerk:

Q. Give your full name.
A. Mary E. Lafield.

By Mr. Johnson:

Q. Where do you live, Mrs. Lafield?
A. 710 Market Street, Marcus Hook.
Q. Are you the mother of James Blades?
A. I am.
Q. Did you see the defendant, Edward Gibbs, at your home on the seventeenth of July, 1947?
A. I sure did.
Q. You tell us what happened in your presence.
A. I had been upstairs cleaning. It was Thursday, the seventeenth. I came down the hall and had been sweeping

the steps. The dust blew in on the living room rug. I was brushing it out.

Q. What time of day?

A. About nine or quarter after nine.

[fol. 31] By the Court:

Q. In the morning?

A. Yes. I was sweeping the dust and I heard someone say, "Good morning, Mrs. Blades." That's what he called me. He was standing in the middle of the hall looking through the draperies. I said, "What do you want here?" He said, "You call Jim. I promised to call him at half past seven." I said, "Jim is not here." I said, "Eddy, get out of here. I am sweeping dust on you." Instead of getting out, he stood there. He said, "I would like to go to the bathroom." I said, "I don't like you to use it but don't stay long" because I had an old man about eighty years old and he had to go back and forth. He went upstairs and he goes and glances his head around in the rooms and I can see the bathroom from my hall door. I watched him come out of the bathroom. I swept the floor and he didn't come out and I go up and I pull all the doors to and then I step over in the other hall and I pull the other two doors to.

When I came back, he was standing in front of James' door watching it. I said, "So, Eddy, are you through in the bathroom?" He said, "Yes". He went downstairs and I said, "Get out and stay out." He went out on the pave-[fol. 32] ment but through my living room windows you can see me going out of the living room. When I saw he was on the pavement, I came on in the room, and said to my granddaughter, "How about having some lunch?" We set down to the table. We had some eggs and bacon. While there my granddaughter said, "I hear footsteps". I said, "The old man is getting up to go to the bathroom." I di n't pay any more account. I never thought of him any more.

James came home and he said, "You are very smart this morning, you moved my radio and what did you do with my clothes?" I said, "No, I put a clean cloth on your stand but I didn't move your radio. I put it back in place." The only thing I did, I took his green slacks and put them in his suitcase. He said, "I haven't any suitcase." I went

upstairs and investigated and I said, "Eddy Gibbs has them because he has been in the house this morning."

Mr. Johnson: Any questions?

Cross-examination.

By the Defendant:

Q. Mrs. Lafield, when I knocked on the door, you were sweeping in the living room?

A. You did not knock. My door was wide open. I was [fol. 33] looking right at you.

Q. Then I asked you where Jimmy was?

A. Yes.

Q. And I asked you if I could use the bathroom.

A. I wasn't in the bathroom. I stood at the door. You asked if you could call Jimmy and I told you Jimmy was up and gone. You said, "He gets up early." I said, "Well, he wants to."

Q. About the only word was you asked how Mom was?

A. I never asked for your mother. I positively did not.

Q. I told you he told me to come to Ninth and Green and I would locate him?

A. No, you certainly did not, and your family's name was never mentioned.

The Defendant: That's all.

---

Ernest Fleming, Sworn.

By the Clerk:

Q. What is your full name?

A. Ernest Fleming.

By Mr. Johnson:

Q. Mr. Fleming, what position do you occupy?

A. In the police department, in the Borough of Marcus Hook; also a constable.

Q. Did you arrest the defendant on or about the seven- [fol. 34] teenth of July, 1947?

A. I did.

Q. On a complaint?

A. I got a telephone call from the chief of police, Mr. Miller, to go up to Mrs. Lafield's to investigate a robbery

that occurred there. I went. The radio had been cut loose from the wall, the wire. I asked Jim, where was the suitcase. He said, the suitcase was by the bed. The clothes in the suitcase were in the closet and he had taken the clothes in the closet and put them in the suitcase. So I said, "We will go up to Chester and check on the pawnshops."

I went to three pawnshops and they gave me a description of Edward Gibbs, but they said they wouldn't take it. I went to Joe's and I also went to a place named James' at 141 West Third Street. Mr. Blades identified the articles taken. He said the man from whom he bought them had given the name of John Wilson, 1360 Fourth Street and there is no 1360 Fourth Street in Chester.

Q. Did you place the defendant under arrest?

A. I went to the Chester police and asked their permission to pick him up. They told me if I saw him to pick him up. I went to several taprooms and found him at a taproom on Edgmont Avenue, Hill's Grill, 323 Edgmont Avenue. He was sitting to a table; he was laying on the [fol. 35] table, with his head like this (indicating), and the watch was exposed and he had on this same straw hat. Mr. Blades identified both of them.

By the Court:

Q. When was this?

A. The seventeenth, about four p.m.

Q. July 17th?

A. Yes.

The Court: I understood the mother to say it was the nineteenth.

Mr. Johnson: Mrs. Lafield, did you say this was the seventeenth?

Mrs. Lafield: Yes.

By Mr. Johnson:

Q. Did you place him under arrest?

A. Yes.

Q. I show you a wallet containing papers.

A. I found that in the cell. We didn't search him when he was put in because he was pretty well intoxicated. He had this covered with a pair of black kid gloves.

Q. Was anyone else in the cell?

A. No, he was the only one.

By the Court:

Q. What was found in the cell?

A. The wallet.

[fol. 36] Q. What day?

A. The same day.

Q. The seventeenth?

A. Yes, sir.

Q. Where was the radio recovered?

A. In the pawnshop.

Q. It was in the pawn shop with the clothing?

A. Yes.

Q. Who operates the pawnshop?

A. A fellow named James.

Q. Did he describe a man like this defendant?

A. Yes. The defendant told me he had taken the things to the pawnshop and pawned them.

Q. Did he tell you how he got them?

A. No, he did not. He told me on the way to Marcus Hook that James had given them to him.

Q. James Blades?

A. Yes.

Mr. Johnson: Any questions?

Cross-examination:

By the Defendant:

Q. What kind of a bed do you have in the Marcus Hook jail?

A. An iron cot.

[fol. 37] Q. That wallet and gloves would be rough in my pocket, wouldn't they?

A. Yes.

Q. Isn't it natural to take them out of my pocket, the pocketbook and gloves, and lay them down?

A. Yes.

Q. It wasn't hard to find?

A. It was on the floor in the corner.

Q. It was in the middle of the bunk. It wasn't hid. It couldn't be hid.

A. It was in the darkest corner that you could get it with the gloves on it.

Q. The gloves and it were laying together?

A. The gloves were on top of it.

Q. Are you sure of that?

A. Yes.

Q. I laid it there and I know. You went in James' pawn shop?

A. Yes, and three others.

Q. I am not interested in the three others. I am interested in James'. You asked him to describe the party.

A. Yes.

Q. Was it one party or two entered James'?

A. One.

Q. There wasn't two of us?

[fol. 38] A. No, there was not.

Q. You didn't ask him concerning anyone else at all?

A. Yes, I did.

Q. That's funny. A fellow went in with me. We went in one place and he wouldn't take it because I told him it didn't belong to me—

Mr. Johnson: He can't testify now. He is just supposed to ask questions.

The Court: You can not testify yet. Later you can tesfify. Ask your questions now.

The Defendant: This all leads up to it.

The Court: You are only asking questions now. You may later take the stand and testify. If you do, you will open up to the district attorney the right to ask questions about certain things.

The Defendant: Yes, sir.

The Court: You may ask any questions you care to on cross-examination on what the district attorney has asked.

The Defendant: That is all if he didn't ask the man about the two of us being in there.

Mr. Johnson: There is one other witness I would like to call. He is not here. If you can recess for lunch, I would appreciate it.

[fol. 39] The Court: We will recess until a quarter of two.

(Recess for lunch.)

Afternoon Session

JAMES SILVERSTEIN, Sworn.

By the Clerk:

Q. Give your full name.
A. James Silverstein.

By Mr. Johnson:

Q. Mr. Silverstein, where do you live?
A. 141 West Third Street, Chester.
Q. Do you have a place of business in Chester?
A. Yes, sir.
Q. What kind of a place?
A. Used articles, shoes, clothing and house furnishings.
Q. Did you see this defendant on or about the seventeenth of July?
A. I did.
Q. Will you tell us in your own way what happened in your place of business?
A. This man came into my place and had a suitcase of used clothing, which he asked me to buy. I asked him what was his reason for getting rid of them. He said, he was [fol. 40] making a ship in Philadelphia and would have no use for the clothing.
Q. Is this the man who brought them there (indicating)?
A. Yes.

By the Court:

Q. What time was it?
A. July 17th, at 12:20 p.m.

By Mr. Johnson:

Q. Was anyone with him?
A. I don't know whether he had another man with him or not. A colored man walked in with him.
Q. This is the man who sold you the clothing?
A. Yes.
Q. Later this was identified as the clothing of Mr. Blades?
A. Yes.
Q. What did he sell you?
A. A radio and some old clothing.
Q. Was there a camera?

A. Yes.

Q. You didn't get the watch?

A. No.

Q. A radio, camera and a suitcase containing clothes?

A. Yes.

Q. What did you give him for them?

A. Eight dollars.

[fol. 41] Q. I show you a watch and ask you whether or not you saw that?

A. I saw it on his hand.

Q. At the time he sold the goods to you?

A. Yes

Mr. Johnson: Cross-examine.

Cross-examination.

By the Defendant:

Q. When I asked you to buy them, didn't I tell you they belonged to a sailor?

A. You told me you were the sailor and wanted to get rid of the articles.

Q. Was there one or two of us came into your place?

A. There was another fellow back of you. I don't know whether he was with you or not. I paid no attention to him.

The Defendant: That's all.

Mr. Johnson: I want to offer into evidence the wallet, the watch, which were identified and found—The watch was found in the possession of the defendant. This wallet, containing the papers of Mr. Blades, which was found in the jail cell that had been occupied by the defendant.

[fol. 42] The Court: What about the radio?

Mr. Johnson: It has been recovered and returned to the owner.

That is the commonwealth's case. We rest.

---

The Defendant: May I call the prosecutor back on the stand?

Mr. Johnson: He desires to call the prosecutor as his witness.

DEFENDANT'S EVIDENCE

JAMES NORRIS BLADES, Recalled.

By the Defendant:

Q. Mr. Blades, you met me at Ninth Street and told me if you weren't home to meet you at Ninth and Green at Sammy's.

A. I did not.

Q. When I came in Sammy's, we had a drink, a bottle of beer together?

A. I did not. I had a glass of beer but I got it with Russell Dowel.

Q. While we were talking at the sandwich bar you told me, there's the stuff sitting on the curb in the suitcase.

A. No.

[fol. 43] Q. You didn't yell and say, "Here comes your bus"—to hurry back?

A. No.

Q. Also you left the stuff right in the suitcase to be picked up?

A. I did not.

The Defendant: That's all.

The Court: Now then, Gibbs, you may, if you want to, take the stand and say anything you want to say, but I warn you if you do, if you have any record of any prior conviction, any felonies or any misdemeanors in the nature of what we call crimen falsi, the commonwealth may offer the record of any convictions you may have had. I am warning you in advance. You may, however, take the stand and testify or you may refuse to take the stand and if you do refuse to take the stand, the commonwealth and the court may not comment unfavorably about your failure to take the stand and testify. I want to warn you fully before you do take the stand.

Do you want to take the stand?

The Defendant: No, I don't have anything to say in court.

The Court: Do you have any witnesses you want to put on the stand?

[fol. 44] The Defendant: No, sir.

The Court: Do you wish to argue it to the jury? You may, if you want to.

The Defendant: No, sir; I don't believe so. I am not educated to talk to the people.

The Court: Do you waive your speech?

Mr. Johnson: I think I should make a few remarks to the jury.

(Address by Mr. Johnson to the jury.)

CHARGE OF THE COURT

The Court: Members of the jury, the defendant, Edward Gibbs, is indicted under one indictment with two counts, the first charging larceny, the second charging receiving stolen goods.

I suppose you withdraw the second count?

Mr. Johnson: Yes.

The Court: The second count is withdrawn, the charge of receiving stolen goods. So that will leave for your consideration the first count only, charging larceny.

As to larceny, under the law of Pennsylvania it is provided, whoever commits larceny, is guilty of felony. Larceny is the felonious taking and carrying away of the per-
[fol. 45] sonalty of another, and the fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner without his consent.

In order to sustain conviction for larceny there must be felonious taking and intention to deprive owner permanently of property and to convert it to the taker's own use.

Now, Mr. Johnson, at the outset of his remarks to this jury somewhat abbreviated that definition and said larceny is stealing. That is a rather short summary but the law as to larceny is as I have given it to you. It is the felonious taking and carrying away of the personalty of another, without the consent of the other and with intent to convert it to the taker's own use.

In this case, as in the other case this morning, the burden is on the commonwealth to convince you beyond a reasonable doubt of the defendant's guilt. He is presumed to be innocent until proven guilty beyond a reasonable doubt and that burden is on the commonwealth, as we charged you this morning.

I have already given you the definition of reasonable doubt, but I will summarize it in as short a manner as possible.

In an endeavor to determine from the evidence any [fol. 46] point essential to the commonwealth's case, if you hesitate as between two conclusions and find yourself mentally reluctant to reach a conclusion and after considering the evidence from all angles, you still hesitate, that is what the law terms a reasonable doubt and defendant is entitled to its benefit. In other words, when you are in that mental state of reluctancy to reach a conclusion, you must draw inferences and find facts the way most favorable to defendant. This is true whether the question in fact is a prime fact in the case, or only a minor matter, necessary to consider on the way to determine a prime fact, or whether it has to do with your final conclusion on the question of the guilt of defendant.

The reluctance to reach a conclusion must not be caused by sympathy or compassion for defendant or others who may be affected by a verdict against him; the reluctance must not come out of your heart but must be one which arises in your mind after consideration of all the evidence in the case.

You are not at any time to allow yourself to conjure up a doubt to avoid the performance of a disagreeable duty. You are not to be controlled by a hesitancy over the decision of a point which you would not consider a matter of doubt or hesitate to decide if it arose in a matter of importance [fol. 47] to yourself. Neither should you condemn unless you are convinced by the evidence that you would venture to act that same way in matters of importance where your own interests are involved.

The credibility of the witnesses is for you. We have given you the tests that you will apply and I am sure you heard them in the charge this morning. I will not repeat them at this time.

In this case, the defendant acts as his own lawyer, which he has a perfect right to do under the laws of this commonwealth. As he has presented no evidence of his own, except having called Mr. Blades and certain questions were asked Mr. Blades and certain answers made; that is the only evidence he presented.

The mere fact that the defendant does not take the stand and testify may not be used against him. I may not comment unfavorably about that and neither may the commonwealth's officer comment unfavorably and you will not take

any inference from the fact that he did not take the stand.

The commonwealth, in order to meet the burden placed upon it, called Mr. Blades to the stand. He testified certain articles of personal property were taken or missing from his bedroom on a certain date. I understood him to say July 19th, 1947, but it will be for you to decide what date [fol. 48] he said. He identified those articles as his, the radio, the two flashlights, a shirt, a camera, a blue serge suit, a watch, a pocketbook and a hat. Those are the articles I understood him to say. There may have been more. Whatever they were will be for you.

Mrs. Lafield, his mother, testified that on July 17th, 1947, the defendant was at the house between nine and nine-fifteen a.m.; that he first asked for Mr. Blades; that she told him he had gone out earlier; that he wanted to go upstairs to use the toilet; that she let him do that; that she went up and saw him looking at the bedroom door of Jim's room. That is Mr. Blades' room. She said she then told him to get out; that a little later on she heard footsteps on the stairs, she and some other person.

Officer Leonard Fleming testified that the same day, July 17th, 1947, he was called in on the case; that he looked for defendant and found him at some taproom; that his head was on the table, he was asleep or intoxicated and that he saw on his wrist at that time the wrist watch which Mr. Blades subsequently identified as his wrist watch. He said he placed this man in a cell and later the same day in the cell, back in a corner, he found a pocketbook under some gloves, which pocketbook later was identified by Mr. Blades as his pocketbook, containing his seaman's [fol. 49] papers, operators license and some other things. He also testified that the defendant told him, the officer, that he had taken the radio and some of these articles to a pawnshop and pawned them; told him where the pawnshop was located. He said that Mr. Blades had given him these things. Mr. Blades on the stand denied he had given him anything.

Mr. Silverstein, the second hand dealer or pawnshop owner, took the stand and said that on July 17th, 1947, at 12:20 p.m. the defendant came in his place with a suitcase full of used clothing, an old radio, a small camera and asked him to buy it. He said he did buy it and gave him

eight dollars. At the time he said he saw a wrist watch on defendant's arm, the wrist watch subsequently identified as Mr. Blades' watch. Mr. Silverstein asked defendant why he wanted to sell these articles and he said he was shipping out and wanted to get rid of the things.

The watch and wallet were offered in evidence.

Now, defendant called Mr. Blades and asked him whether he had told him to take the suitcase and do something with his clothing and he denied it; he denied he asked him to do anything with his clothing or that he had in any way given him any of these articles. That, in short, is the testimony, [fol. 50] on both sides.

As to the law in this matter, when a person is found in possession of recently stolen personal property, the mere fact that the person is found in possession of property which is recently stolen is sufficient for the jury to draw an inference that the person who has that possession, that property, was the thief or the person who committed larceny of the property. You may draw that inference from the fact a person is in possession of recently stolen property.

You will recall in this case that the evidence was the defendant had this property in his possession on July 17th and took it to a pawnshop, pawned some of it there and had the rest of it on his person, a wrist watch and pocketbook, on July 17th. There seems to be no doubt but that he did have possession of this property on that date.

The evidence by Mr. Blades was that this property was in his room at his mother's home at or shortly before this time. So, from that, if you are convinced beyond a reasonable doubt those were the facts, you could draw the inference the defendant did commit larceny of this property which was found in his possession on July 17th.

However, this case depends on the law of circumstantial evidence. In other words, no one actually saw the defend- [fol. 51] ant take this property. While they saw it in his possession later on, no one saw him in the act of taking it. Therefore, we do not have any evidence as to the actual taking and you are obliged to view this case through the circumstantial evidence law.

There are numerous decisions in Pennsylvania as to what the circumstantial evidence law is. I am going to give you the most recent one which we have. Here it is:

The requirement of the law is that in order to warrant a conviction (that is under circumstantial evidence where

there is only circumstantial evidence and not direct evidence) the facts and circumstances proved must be of such character as to produce a moral certainty of the guilt of the accused beyond any reasonable doubt—not that they need be absolutely incompatible with his innocence—and that doubt is for the jury unless the evidence be so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.

I hope that is perfectly clear to you. I am sure from the looks on your faces, it is not, but that is what the law is.

[fol. 52] They also say that evidence sufficient to implicate an accused in a crime must be something more than evidence showing remote connection between the accused and the crime, or evidence that merely raises a suspicion of guilty intention. An accused is entitled to an acquittal if his guilt of the crime charged is not the only reasonable interpretation of which the facts adduced against him are susceptible. Guilt must be proved and not merely conjectured.

Now, there it is, members of the jury. I hope it is perfectly clear to you. I am not going to try to simplify it because I am afraid if I did, I would commit reversible error, and I am not going to try and revise it. I have given it to you in one of the most recent utterances and that is it.

That is something more than proving the defendant guilty beyond a reasonable doubt. I will go that far and say that to you. You must be convinced in accordance with the circumstantial evidence rule. The evidence of the commonwealth must be such as to comply with the circumstantial evidence rule in its degree of strength or proof when they depend on circumstantial evidence alone.

However, the law also is, where a person is found in possession of recently stolen property, if you are convinced a person has been found in possession of recently stolen [fol. 53] property, then from that fact alone you may draw the inference, if you are convinced beyond a reasonable doubt that such person was found in possession of recently stolen property, you may draw the conclusion that that person committed larceny of that property.

I could talk to you the rest of the afternoon and could not tell you much more than that. That is all I am going to say on the law in this case.

Now, there is just one further matter and that is as to costs. If you convict, you will have nothing to do with the costs. If you acquit, this being a charge of larceny, where the

value of the goods alleged to be stolen is less than a hundred dollars, you, the jury, if you acquit, shall determine by your verdict whether the county, the prosecutor or the defendant shall pay the costs or whether the same shall be apportioned between the prosecutor and the defendant and in what proportion, in the same manner as now provided by law in the case of misdemeanors.

I think you heard me say before what to do as to misdemeanors. I will repeat it. If you acquit and you should find from the evidence the value of the goods was less than one hundred dollars, then you would have the matter of costs to dispose of.

[fol. 54] In disposing of those costs, you may place them all on the prosecutor or prosecutrix, naming him or her, or all on the defendant, or all on the county of Delaware, or you may apportion them between the prosecutor or prosecutrix, naming him or her, and the defendant, in whatever proportion you see fit. You may not apportion them between the county and any other person.

You will notice on the back of the indictment the prosecutor's name is James Blades. You are not obliged to take that fact alone and name him as prosecutor. You may name some other person as prosecutor, if the evidence is sufficient to prove someone else is the prosecutor.

Any errors, omissions or corrections, Mr. Johnson?

Mr. Johnson: None, Your Honor.

The Court: Any errors, omissions or corrections that you want me to correct, Mr. Gibbs?

The Defendant: No, sir.

The Court: Take the case and dispose of it.

(Jury retires.)

(Jury returns to court room.)

[fol. 55] VERDICT

The Clerk: Members of the jury, have you agreed upon a verdict?

The Forelady: We have.

The Clerk: In the issue joined between the Commonwealth of Pennsylvania and Edward Gibbs, do you find him guilty in the manner and form in which he was indicted or do you find him not guilty?

The Forelady: Guilty.

The Clerk: Members of the jury, hearken to your verdict as the court hath it recorded. You do say in the issue joined between the Commonwealth of Pennsylvania and Edward Gibbs that you find the defendant guilty and so say you all.

The Jurors: We do.

Mr. Johnson: I think it would be interesting for the jury to know the type defendant we have. Your Honor, here is one we have marked up on the left; the important one.

EDWARD GIBBS, called.

By the Court:

Q. Gibbs, do you have anything to say before we impose sentence?

A. No, I guess not.

Q. How long have you been in jail?

A. Two months and a half.

[fol. 56] Q. What is the matter with you; why can't you keep out of trouble?

A. I don't know, sir.

Q. You don't know why you can't do it? What do you do, get drunk or something, or are you just ornery?

Mr. Johnson: Don't you think this man would be better if he were sent to the Eastern Penitentiary?

By the Court:

Q. Do you realize you can be put away for the rest of your life?

A. (No answer.)

The Court: It is a wonder the district attorney doesn't indict you for it. You can be indicted.

Mr. Johnson: If he comes back again, I will take it as my personal job to indict him.

The Court: In 1928 you were found guilty of burglary, larceny, receiving stolen goods, before Judge Fronefield—one to two years, county jail. In 1931, plead guilty to larceny—$100 fine and costs, one to two years, Judge MacDade. 1932 found guilty of larceny and receiving stolen goods, $50 fine and costs, six months to three years in

county jail, Judge Morrow. That is three. 1934 larceny, found guilty, $100 fine and costs, six months to three years in county jail; sentenced to one year in county jail for violation of parole; Judge Fronefield. That is four. 1937, [fol. 57] receiving stolen goods, $10 fine and costs, one to three years county jail, sentence suspended by Judge MacDade. That is five. 1938, larceny; found guilty, one and a half to three years county jail, Judge Crichton. I don't believe there is anyone you missed up to now. You were before me a year ago. No, just last March. You beat that, not guilty. Now, here you are the seventh time.

All I can do is give him two and a half to five years, if you don't want to indict these fourth offenders.

SENTENCE

On No. 417 September Sessions 1947, the sentence of the court is that you undergo imprisonment in the Eastern State Penitentiary at solitary confinement and hard labor for two and a half to five years and stand committed until this sentence be complied with. If I could give you life, I would do it.

Take him away.

(Testimony closed.)

[fol. 58] REPORTER'S CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of this cause and that this is a correct copy of same.

Margaret Fenix Cornwall, Official Court Stenographer

ORDER APPROVING RECORD OF PROCEEDINGS

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

(S.) Harold L. Ervin, Judge.

[fol. 58a-60] Lodged 10/16/47. J. G.

[fol. 61] (Acknowledgment of receipt of record omitted.)

[fol. 62] (Order of Supreme Court of the United States omitted.)

[fols. 63-64] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 65] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 127, Misc.

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR WRIT OF CERTIORARI AND TRANSFERRING CASE TO APPELLATE DOCKET—November 15, 1948.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 418.

Endorsed on cover: Enter Petitioner pro se. In forma pauperis File No. 53,420 Pennsylvania, Supreme Court, Term No. 418, Edward Gibbs, Petitioner, vs. C. J. Burke, Warden, Eastern State Penitentiary, Philadelphia, Pennsylvania. Petition for writ of certiorari and exhibit thereto. Filed September 17, 1948. Term No. 418 O.T. 1948.